
HOUSE BILL No. 1340

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-2-6; IC 8-1-1.

Synopsis: Proceedings before the IURC. Requires the utility regulatory commission (IURC) to consider the impact of its proposed order or determination in a case before it on any of the following that have an interest in or will be affected by the order or determination: (1) The ratepayers or customers of a utility under its jurisdiction. (2) The employees of a utility under its jurisdiction. (3) A utility under its jurisdiction. Requires the IURC to consider the impact of its determination on the public interest, regardless of whether the public interest was represented in the case by the utility consumer counselor. Requires the IURC, at least ten days before issuing a final order in a proceeding, to serve on all parties any report, audit, examination, analysis, or recommendation that is prepared at the IURC's direction and not included in the record of the proceeding. Prohibits the IURC from communicating with any of the following, or with an agent or representative of any of the following, about an issue in a proceeding, except on notice and with opportunity for all parties to participate: (1) A party to the proceeding. (2) A government agency. (3) A government official or the official's office staff. Requires the IURC to give notice of an parte communication to all parties and to the IURC's secretary for inclusion in the public record. Specifies information that a notice of ex parte communication must include. Requires a utility lobbyist who lobbies an IURC representative through certain activities or gifts to file an activity report with the state ethics commission.

Effective: July 1, 2003.

Pelath, Fry

January 14, 2003, read first time and referred to Committee on Commerce and Economic Development.



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1340

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-2-6-2 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) There is created a state ethics
3 commission.
4 (b) The commission is composed of five (5) members appointed by
5 the governor.
6 (c) No more than three (3) commission members shall be of the
7 same political party. A person who:
8 (1) holds an elected or appointed office of the state;
9 (2) is employed by the state; ~~or~~
10 (3) is registered as a lobbyist under IC 2-7-2-1; **or**
11 **(4) is a utility lobbyist (as defined in IC 8-1-1-5.5);**
12 may not be a member of the commission. The governor shall designate
13 one (1) member of the commission as the chairman. Each appointment
14 to the commission is for a period of four (4) years. A vacancy shall be
15 filled by the governor for the unexpired term.
16 (d) The governor and state budget agency shall provide such rooms
17 and staff assistance as the commission may require.



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SECTION 2. IC 4-2-6-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2.5. The commission has jurisdiction over the following persons:

- (1) A current or former state officer.
- (2) A current or former employee.
- (3) A person who has or had a business relationship with an agency.
- (4) A special state appointee.
- (5) After June 30, 2003, a utility lobbyist (as defined in IC 8-1-1-5.5) in connection with an activity report required to be filed under IC 8-1-1-5.5.**

SECTION 3. IC 8-1-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) The commission shall in all controversial proceedings heard by it be an impartial fact-finding body and shall make its orders in such cases upon the facts impartially found by it. The commission shall in no such proceeding, during the hearing, act in the role either of a proponent or opponent on any issue to be decided by it. All evidence given in any such proceeding shall be offered on behalf of the respective parties to, or appearing in, the proceeding and not in the name or behalf of the commission itself. **Before issuing an order or making a determination in a proceeding before it, the commission shall consider the impact of its proposed order or determination on any of the following that have an interest in or will be affected by the commission's order or determination:**

- (1) The ratepayers or customers of a public utility, municipally owned utility, or subscriber owned utility under the jurisdiction of the commission.
- (2) The employees of a public utility, municipally owned utility, or subscriber owned utility under the jurisdiction of the commission.
- (3) A public utility, municipally owned utility, or subscriber owned utility under the jurisdiction of the commission.

The commission shall consider the impact of its proposed order or determination on the public interest, regardless of whether the interests of the public were represented by the utility consumer counselor under subsection (c) or IC 8-1-1.1-5.1.

(b) Any report, audit, examination, or analysis prepared by the commission staff **or an agent of the commission** at the request or direction of the commission may be made a part of the record of the proceeding, subject to cross-examination by any party of the person who performed or directed the preparation of the report, audit,

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examination or analysis. **Any report, audit, examination, analysis, or recommendation that:**

(1) is prepared by the commission staff or an agent of the commission and communicated to the commission or an administrative law judge;

(2) concerns an issue of fact or law in an adjudicatory proceeding; and

(3) is not made part of the record of the proceeding; must be served by the commission or an administrative law judge on all parties to the proceeding not less than ten (10) days before a final order is issued in the proceeding.

(c) If in any such proceeding the public interest is not otherwise adequately represented by counsel, in the opinion of the commission **or of the utility consumer counselor**, it shall be the duty of the utility consumer counselor, if requested by the commission **or on the utility consumer counselor's own motion**, to make adequate preparation for the presentation of the interests of the public in such proceeding, and **he the utility consumer counselor** shall at the hearing represent the public interests therein involved.

(d) However, nothing in this section prevents the commission from instituting, prosecuting, hearing, or determining any investigation or proceeding which it is authorized to do, or make, on its own motion by any law with the administration of which it is charged.

(e) ~~Except as otherwise provided in this chapter, no member or A commissioner, an administrative law judge, or a staff employee of the commission assigned to make findings of fact and conclusions of law in a formally docketed evidentiary proceeding may not communicate in connection with any issue of fact, or law, or policy disputed in that proceeding with any a:~~

(1) party to the proceeding or his the party's agent or representative;

(2) government agency or the agency's agent or representative; or

(3) government official or the government official's agent, representative, or office staff;

except on notice and with opportunity for all parties to participate. **If, after notice and the opportunity for all parties to participate, a communication described in this subsection occurs, the commissioner, administrative law judge, or commission staff employee assigned to the proceeding shall report the communication not later than three (3) working days after the date of the communication by submitting a notice of ex parte**

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1 communication to all parties to the proceeding and to the secretary
2 of the commission for inclusion in the public record.

3 (f) A notice of ex parte communication provided under
4 subsection (e) must include the following information:

5 (1) The date, time, and location of the communication and
6 whether it was oral, written, or oral and written.

7 (2) The identity of:

8 (A) all participants in the communication;

9 (B) the person initiating the communication; and

10 (C) any other persons present during the communication.

11 (3) A description of the communication and a summary of the
12 content of the communication.

13 The commissioner, administrative law judge, or commission staff
14 employee assigned to the proceeding shall attach to the notice a
15 copy of any written material or text used during the
16 communication.

17 (g) A person who violates this section commits a Class C infraction.

18 SECTION 4. IC 8-1-1-5.5 IS ADDED TO THE INDIANA CODE
19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
20 1, 2003]: Sec. 5.5. (a) Except as otherwise provided, the definitions
21 in IC 2-7-1 apply throughout this section.

22 (b) As used in this section, "commission representative"
23 includes:

24 (1) a commissioner;

25 (2) an administrative law judge;

26 (3) an employee of the commission; or

27 (4) any other agent of the commission, including a
28 nonemployee agent, an independent contractor, an expert, or
29 any other professional retained by the commission in
30 connection with a particular matter before the commission.

31 (c) As used in this section, "utility lobbying" means
32 communicating by any means, or paying others to communicate by
33 any means, with a commission representative with the purpose of
34 influencing:

35 (1) the commission's action in any adjudicatory, rulemaking,
36 or other controversial proceeding before the commission; or

37 (2) the commission's action or position on any legislative
38 action concerning utilities or the utility industry;

39 on behalf of a public utility, municipally owned utility, or
40 subscriber owned utility under the jurisdiction of the commission.

41 (d) As used in this section, "utility lobbyist" means any person
42 who engages in utility lobbying regardless of whether the person is

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required to file a registration statement under IC 2-7-2 or activity reports under IC 2-7-3 with the Indiana lobby registration commission.

(e) A utility lobbyist who engages in utility lobbying under this subsection shall file with the state ethics commission created by IC 4-2-6-2 an activity report made under oath and containing the information required under subsection (g). The utility lobbyist shall file the activity report within the time specified in subsection (f) after engaging in utility lobbying by means of or during any of the following:

- (1) An event, a meal, a reception, or other function that is:
 - (A) held after June 30, 2003;
 - (B) hosted, sponsored, or attended by the utility lobbyist; and
 - (C) attended by one (1) or more commission representatives.

An activity under this subdivision includes entertainment or other events open to or attended by the general public.

- (2) A gift or gifts:
 - (A) made by the utility lobbyist to a commission representative or the commission representative's spouse or unemancipated child after June 30, 2003; and
 - (B) having a total fair market value in excess of one hundred dollars (\$100).

(f) A utility lobbyist who engages in utility lobbying under subsection (e)(1) shall file an activity report with the state ethics commission not later than forty-eight (48) hours after the scheduled start time of the activity described in subsection (e)(1). A utility lobbyist who engages in utility lobbying under subsection (e)(2) shall file an activity report with the state ethics commission not later than two (2) days after the delivery date of the gift or gifts described in subsection (e)(2). IC 4-21.5-3-2 applies in computing the time periods under this subsection.

(g) An activity report required under subsection (e) shall include the following:

- (1) The utility lobbyist's name, Social Security number, residence address and telephone number, business address and telephone number, and the addresses and telephone numbers of any temporary living or business quarters the utility lobbyist has in Marion County.
- (2) The name, business address, telephone number, and kind of business of each person (including the names of each officer



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or partner) who compensates the utility lobbyist.

(3) The utility lobbyist's primary occupation and the name or names of the utility lobbyist's employers, if different than those specified in subdivision (2).

(4) For an activity described in subsection (e)(1), a description of the activity, including the following:

(A) The date, time, and location of the event.

(B) The name and business address of each sponsor or host of the event.

(C) The name and title of each commission representative in attendance.

(D) The name and title of each commission representative with whom the utility lobbyist communicated while engaging in utility lobbying in connection with the event.

(E) The utility lobbyist's total expenditures, if any, in connection with the event. An amount reported under this section is not required to include expenditures described in IC 2-7-3-3(c) and incurred by a utility lobbyist in connection with the event.

(F) The general subject matter of the utility lobbying performed in connection with the event. The information provided under this clause must identify the:

(i) adjudicatory, rulemaking, or other controversial proceeding; or

(ii) legislative action concerning utilities or the utility industry;

that is under consideration by the commission.

(5) For a gift or gifts described in subsection (e)(2), a description that includes the following:

(A) The name and title of the commission representative, or the commission representative's spouse or unemancipated child, who is the beneficiary of the gift or gifts.

(B) The fair market value and source of the gift or gifts.

(C) The utility lobbyist's total expenditures, if any, in connection with the gift or gifts. An amount reported under this section is not required to include expenditures described in IC 2-7-3-3(c) and incurred by a utility lobbyist in connection with the gift or gifts.

(D) The general subject matter of and an identifying reference to the:

(i) adjudicatory, rulemaking, or other controversial

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proceeding; or

(ii) legislative action concerning utilities or the utility industry;

that is under consideration by the commission and in connection with which the utility lobbyist made the gift.

(6) Any other information that the state ethics commission may by rule require.

(h) A utility lobbyist shall obtain and preserve all documents necessary to substantiate an activity report required under subsection (e) for four (4) years from the date of filing of the report to which the documents relate. The utility lobbyist shall make these materials available for inspection upon request by the state ethics commission.

(i) The state ethics commission may adopt rules under IC 4-22-2 to implement this section, including rules concerning enforcement of this section and prescribing penalties for violations of this section or of any rules adopted under this section.

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